

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

DAVID LORENZA JOYNER, #1230707                   §  
   §  
VS.   § CIVIL ACTION NO. G-06-728  
   §  
THOMAS A. DAVIS, JR., ET AL.                       §

**REPORT AND RECOMMENDATION**

On April 3, 2007, Plaintiff, David Lorenza Joyner, filed a “Certificate of Appealability” and a “Motion to Alter the Judgment and File the Amended Petition against Judge Kent and Froeschner in their Administrative Capacities: Executive Capacities.”

On March 20, 2007, the District Court signed an Opinion and Order construing Joyner’s “Petition for Writ of Habeas Corpus” filed directly in this civil rights action, as nothing more than a creative effort to seek to proceed *in forma pauperis* free of the preclusive impediment under 28 U.S.C. § 1915(g), the “three strikes” provision of the Prison Litigation Reform Act. The Court then denied his request for pauper status.

Under the circumstances, a request for a Certificate of Appealability is completely inappropriate, and his Motion to Alter the Opinion and Order which Joyner now wants to treat as a “Judgment” is without any merit whatsoever.

It is, therefore, the **RECOMMENDATION** of this Court that “Joyner’s Certificate of Appealability” and “Joyner’s Motion to Alter the Judgment and File the Amended Petition against Judge Kent and Froeschner in their Administrative Capacities: Executive Capacities” (Instrument no. 17) be **DENIED**.

The Clerk **SHALL** send copies of this Report and Recommendation to the Parties, who **SHALL** have until **April 25, 2007**, to have written objections, filed pursuant to 28 U.S.C. §636(b)(1)(C), **physically on file** in the Office of the Clerk. The Objections **SHALL** be electronically filed and/or mailed to the Clerk's Office at P.O. Drawer 2300, Galveston, Texas 77553. Any Objections filed **SHALL** be contained in a written document specifically entitled "Objections to the Report and Recommendation of the Magistrate Judge", which will then be forwarded to the District Judge for consideration. Failure to file written objections within the prescribed time **SHALL** bar the aggrieved party from attacking on appeal the factual findings and legal conclusions accepted by the District Judge, except upon grounds of plain error.

DONE at Galveston, Texas, this       9th       day of April, 2007.



John R. Froeschner  
United States Magistrate Judge